

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.884/2019

Shoiabulla Khan Azharulla Khan Patel .vs. State of Maharashtra through
PSO P.S. Akot Rural, tq. Akot Dist. Akola.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Adwait Manohar, Advocate for applicant.
Mr. S. M. Ghodeswar, A.P.P. for non applicant-State.

CORAM: V. M. DESHPANDE, J.

DATED : OCTOBER 3, 2019

1. Heard Mr.Manohar, learned counsel for applicant and Mr. Ghodeswar, learned A.P.P. for non applicant-State. Also perused the charge-sheet which is placed on record.

2. Applicant is arrested on 26.05.2019 in connection with Crime No.234/2019 registered with Police Station, Akot Rural, Tq. Akot, Dist. Akola for an offence punishable under Sections 302, 307, 324, 425, 143, 147, 148, 149 and 294 of the Indian Penal Code.

3. It is submission of Mr. Manohar, learned counsel for the applicant that though there are twelve eye witnesses in the present case, perusal of their statements would reveal that their statements are recorded on 24.06.2019, 11.07.2019 and 18.07.2019 and those show that deceased was assaulted on his back of head. He submits that the deceased Matin Khan was not assaulted by the present

applicant as sought to be portrayed by the eye witnesses by means of iron rod. It is his submission that it could be seen from the post mortem report, which clearly belies the eye witness inasmuch as there is no injury on the backside of the head of the deceased. He also invited my attention to recitals of counter First Information Report No.235/2019, which is lodged by informant Fateh Rafat Patel to show that how deceased received injuries on his temporal region.

4. *Per contra*, the application is opposed by learned A.P.P. Mr. Ghodeswar. He submits that specific role is attributed by eye witnesses against the present applicant.

5. The charge-sheet would reveal statements of five police personnel; ASI Narayan Wadekar, Head Constable Sunil Fokmare, Constable Pravin Gavli, Constable Anil Shirsat and Constable Amol Bundehe. Those statements clearly show that on 24.05.2019 at 07.30 in the night, an information was received that at village Mohala, there is a free fight going on in between two groups. Therefore, the police party went to the said spot and took the injured persons to the hospital.

6. The crime, in which the present applicant is arrested, was registered on the basis of report lodged by Inayat Kha Miya Kha Patel. It shows that as per the FIR, the present applicant along with co-accused persons and one Hidayatulla Kha, who is the leader of the opposite group,

came to the house and assaulted on him at Mohala. According to the FIR, statement of Inayat Kha attributes role of assault by the present applicant by means of iron rod on the backside of the head of the deceased Matin Kha.

7. For the very same incident, counter FIR is lodged by Fateh Rafat Patel. It shows that the deceased Matin Khan along with other 15 others assaulted on him and Inayat Kha, accused in the said crime, tried to assault on him, by means of iron rod aiming at his head. However, the said was ducked by the said Fateh Rafat Patel and that landed on the frontal region of the head of Matin Khan, which proved to be the injury resulting into his death. First informant in FIR No.235/2019, Fateh Rafat Patel is also an injured person. He suffered fractures. Admittedly, there are two groups and there was a free fight in between two groups. Statements of eye witnesses are belied by medical evidence. Not only that, how there is injury on the frontal region on the head of the deceased Matin Khan can be seen from the recitals in the counter FIR.

8. In view of the aforesaid, when the charge-sheet is already filed after completion of entire investigation, further custodial presence of the applicant is not necessary. At the same time, interest of the prosecution can also be secured by imposing stringent conditions upon the applicant. Hence, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Shoiabulla Khan Azharulla Khan Patel be released on bail in connection with Crime No.234/2019 registered with Police Station, Akot Rural, Tq. Akot, Dist. Akola for an offence punishable under Sections 302, 307, 324, 425, 143, 147, 148, 149 and 294 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The applicant is directed not to enter territorial jurisdiction of village Mohala till culmination of the trial.
- (iv) The applicant is directed to furnish address of his residence before the learned Court below before whom he will be executing his bail bonds and the said learned Judge shall direct the applicant to attend the police station nearest to his place of residence, once in a month i.e. on last Sunday of every month, till the culmination of trial.
- (v) The observations made in this order are only for deciding this application. The learned Judge of the trial Court before whom trial will be conducted should not get himself influenced by it.

The application is disposed of.

JUDGE